

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 5202 of 1996
For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KOLI DHARMESH @ DHAMO

VIRJIBHAI

Versus

DIST.MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

Heard learned advocate Ms. DR. Kachhavah for the petitioner and Mr. Nigam Shukla, learned APP, for the respondents.

This Special Civil Application is directed against the detention order dated 25th April 1996, whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985, by the District Magistrate, Junagadh.

The detention order dated 25th April 1996 was executed on 26th April 1996 and since then the petitioner is under detention lodged at the Central Jail, Vadodara.

The present Special Civil Application was filed in this Court on 18th July 1996 and on 19th July 1996, rule returnable on 12th August 1996 was issued. However, so far, no reply has been filed by the respondents, nor has any affidavit been filed by the detaining authority.

The grounds enclosed with the detention order show that three criminal cases were filed against the petitioner for the offences punishable under Sections 323, 504, 506(2) of the Indian Penal Code and Section 135 of the Bombay Prohibition Act; Sections 323, 354, 448, 506(2) and 114 of the Indian Penal Code; and 323, 504, 506(2) and 4276 of the Indian Penal Code. Out of these three criminal cases, one case is pending trial and in other two cases, police investigation was going on. The detaining authority after taking into account the allegations pertaining to these three criminal cases has noticed that even after release on bail the petitioner was engaged in criminal and anti-social activities in Junagadh city and in the areas nearby. The detaining authority has found that the petitioner was a head strong person and he along with his associates has been engaged in public beating and threatening the innocent persons; he has been using weapons; creating an atmosphere of terror; was known as 'DADA', and had become a problem to maintenance of public order. The detaining authority has also considered the statements made by five witnesses against the petitioner on 1.3.1996, 2.3.1996 and 3.3.1996 and all these witnesses have stated against the petitioner's criminal activities. The detaining authority has also found that in order to prevent the petitioner from continuing anti-social activities, it was necessary to detain him and accordingly detention order was passed.

The detention order is challenged on more than one grounds, but the learned advocate for the petitioner has kept his arguments confined to the question that the petitioner was released in all the criminal cases by bail orders passed by the courts, yet the copies of the bail applications and the bail orders in the criminal cases, being C.R. Nos. 67/96 and 2/96, were not supplied to him.

I have carefully considered the submissions made by learned advocates for both the parties.

Learned Additional Public Prosecutor has not been able to controvert the factual averments made in paragraph 13 of the petition - rather - it is admitted that the copies of the bail applications and bail orders

have not been supplied to the petitioner. It is already held by this Court that copies of bail application and bail orders are the documents which are vital for the purpose of making effective representation. Therefore, it is clear that, on the uncontroverted facts, the petitioner has been deprived of a right to make effective representation under Article 22(5) of the Constitution of India and the detention order deserves to be set aside on this ground alone.

Accordingly, this Special Civil Application is allowed. The impugned order dated 25th April 1996, passed by the District Magistrate, Junagadh, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner forthwith and set him at large, if not required in any other cases. Rule is made absolute.

(swamy)*****